

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:21-CV-155-BO

MICHAEL JOSEPH COSTABILE,)
PRECISION TIME SYSTEMS, INC.,)
 Plaintiff,)
))
v.)
))
KEITH FOGLEMAN, et al.,)
 Defendants.)

ORDER

This cause comes before the Court on plaintiff Costabile's motion to dismiss [DE 15] counterclaims 5 and 6 and defendant Fogleman's motion to dismiss in part [DE 20] the Amended Complaint. For the reasons that follow, the motions [DE 15, 20] are denied as moot.

Plaintiff Michael Costabile filed this patent infringement suit against Keith Fogleman and Ustopit, LLC on September 13, 2021. On November 12, 2021, defendants answered the complaint and raised six counter claims. On December 3, 2021, plaintiff filed a motion to dismiss [DE 15] counterclaims 5 and 6 and an Amended Complaint. On January 7, 2022, defendants filed a motion to dismiss [DE 20] the Amended Complaint in part. Defendants answered and raised six counterclaims again. On February 1, 2022, plaintiffs filed a Second Amended Complaint. Defendants answered and raised the counterclaims again. On June 29, 2022, plaintiffs filed a Third Amended Complaint. Defendant filed an answer and raised the counterclaims again. On June 27, 2022, a stipulation of dismissal was filed stating that plaintiffs and counterclaim defendants Michael Joseph Costabile and Precision Time Systems, Inc. voluntarily disrriss claims 3 and 4 against defendants and Counterclaimants Keith Fogleman, Roger Ayers, and Ustopit, LLC.

"As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect." *Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001) (internal quotations omitted). Plaintiff's motion to dismiss counterclaims 5 and 6 seeks dismissal of counterclaims raised in an Answer corresponding to the original Complaint, which has now been superseded by the Second and Third Amended Complaints. The motion to dismiss [DE 15] addressed a superseded filing. Accordingly, the motion [DE 15] is denied as moot. Defendants' motion to dismiss the Amended Complaint in part [DE 20] addressed a filing, the Amended Complaint, that has been ultimately superseded by the Third Amended Complaint. Accordingly, the motion [DE 20] is denied as moot.

Accordingly, for the foregoing reasons, plaintiffs' motion to dismiss counterclaims 5 and 6 [DE 15] and defendants' motion to partially dismiss [DE 20] the Amended Complaint are DENIED AS MOOT.

SO ORDERED, this 17 day of August, 2022.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE